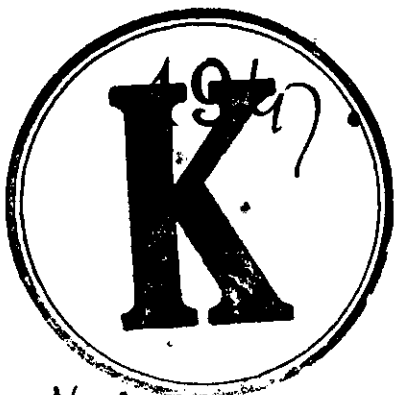




File No. Essential

Supplies 47/47

Legal

DEPARTMENT

PT-III

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Subject:— Rules and notification  
under the Essential  
Supplies (Temporary powers)  
Act, 1946.

(For Previous Papers Please see  
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Legal Department File No.

Expend. Supplies 11/47, part II

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The Essential Supplies (Temporary  
Power) Act, 1946.

1. U. 1. to C.C.D.  
Ex. 11457 11457  
dated 1/12/47.      Sec. 3-- order under ---      1-6.
  
2. U. R. to C.C.D. No.  
10450  
dated 6/11/47.      Possibility of creating penal  
liability under an order  
when the principle Act  
contains those provisions.      5-6.
  
- U. R. to C.C.D. No.  
11152  
dated 21/11/47.      Sec. 3-- order under ---      7-10.

Madame Dooki  
15/5/50.

c/6.

A revised draft order is sent herewith.

2. The proposal of the C.S. D. to include in the scope of the proposed order "such foodgrains as Government may declare to be foodgrains by order etc." is not legally feasible. It will therefore be necessary for Government whenever necessary to amend the Schedule to the order and make additions of other foodgrains the movement of which is proposed to be prohibited. Clause 1 of the order has been therefore amended by deleting reference to those words.

3. It appears that the C.S.D. proposes to exclude the ~~Bombay~~ Bombay Suburban District from the proposed Order in view of Government Order, F.D. (S) No. 11(7) I, dated 4th January 1946. That Order however extends to the Bombay Suburban District including the 47 villages transferred to the Thana taluka of the Thana district by G.M., R.D. No. 9823/33-III, dated 24th September 1945. In order to avoid ~~conflict~~ conflict it is therefore necessary to exclude the said 47 villages from the Thana District for the purposes of the proposed order. An explanation has therefore been <sup>a</sup>added at the end of the draft order.

4. In the draft appendix corresponding to revised Schedule I, the C.S.D. mentions in column 2 as the "issuing authorities" the Collectors of the various Districts. Powers under rule 81 of the Defence of India Rules to make orders thereunder prohibiting the movement of commodities it appears were not delegated to Collectors but to District Magistrates. The reference to Collectors as the authorities which made the orders does not therefore appear to be correct and has been

changed to the District

changed to the District Magistrate concerned. C.S.D. should verify whether the reference to the various orders quoted is otherwise correct.

T. C. signed by D. S.

sd/-

for Remembrancer of Legal Affairs.

U. R. to C.S. D. No. 11457 dated the ~~1st~~ 1st December 1947.

Madhav Raokadam.

15/5

c/5

Civil Supplies Department,  
Bombay Castle,

3.

1947.

Essential Supplies  
(Temporary Powers)  
Act, 1946.

Order.

No. 821/II: In exercise of the powers conferred by section 3 of the ~~Essential~~ Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Food Notification No. FY. 603 (2)-I, dated the 21st October 1946, and in supersession of the orders specified in column 1 of Schedule I hereto ~~appended~~ appended made by the authorities respectively specified against them in column 2 of the said Schedule I, that is to say, in so far as they relate to the commodities mentioned in Schedule II hereto appended, the Government of Bombay is pleased, with the previous concurrence of the Central Government, to make the following order, namely:-

No person shall remove or cause to be removed by rail, road, river, sea or air any quantity of the foodgrains specified in Schedule II hereto appended from any place within any district of the Province (other than the Bombay Suburban District) to any place outside that district, except under and in accordance with a permit granted by the District Magistrate concerned.

2. Any Court trying a contravention of this order may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty.

Explanation :- For the purposes of this order,

(1) "Bombay Suburban District" means the Bombay Suburban District as constituted immediately before the

1st day of October, 1945; and

(11) "Thana District" shall not include the 47 villages of the Thana taluka specified in Schedule 'A' to Government Notification, Revenue Department, No. 9923/33-III, dated the 24th September 1945.

Schedule I

(Here enter B- B on pages 92-94 ~~ante~~ ante)

Schedule II

(Here enter A - A on pages 92 ante).

By order of the Governor of Bombay,

Secretary to Government.

Madhav Rao Kadam.

15/5/.

c/5.

Office of the R.L.A.

Clause 20A, as proposed by the G.S. D. on p.29 ante, is to the effect that if a person employed by or acting on behalf of an authorized <sup>0</sup>wholesale distributor, authorized retail distributor or authorized establishment contravenes any of the provisions of the Bombay Rationing Order, 1943, such distributor etc. should be liable to punishment whether or not such distributor etc. was present when the contravention took place. The effect of this clause would be to create vicarious liability and to punish the master for the servant's sins. After the proposed ~~expanded~~ expanded definitions of authorized wholesale distributor, authorized retail distributor and authorized establishment become effective, the servants would themselves become punishable in addition to the masters. Where such knowledge as would be sufficient to prove actual complicity in the crime could be attributed to the master, he himself would be punishable although the physical <sup>act</sup> of contravention may have been committed by the servant. It would not, however, be feasible by means of an order to punish the master for the servant's contravention in a case where the master was totally unconnected with such contravention. It is not a proper function of subordinate legislation like an order of this kind to create a penal liability. Penal liability has been created by section 7 of the ~~Essential~~ Essential Supplies (Temporary Powers) Act, 1946, and can be added to or varied by an amendment of the Act. Under section 7 it is only the person who contravenes the order who becomes

punishable, and if it is proposed to include other persons, the proper course would be to amend section 7 and to import therein vicarious liability on the lines of section 9 which deals with corporations. Moreover, a provision like that of the proposed order would offend against the fundamental rule regarding mens rea being a necessary constituent of a crime even under special legislation; (see 49 Bombay Law Reporter, p. 688) and that rule can be dispensed with only by amending the Act.

sd/- P.M.L.

Remembrancer of Legal Affairs.

U. R. to C.S.D. No. 10650, dated the 6th November, 1947.

Madhav Raokadan.

15/5/56.

c/5.

Office of the R.L.A.

A revised draft Order is sent herewith.

2. The Civil Supplies Department draft Order at page 55 ante fixes the maximum prices, wholesale and retail of hard coke in supersession of the District Magistrate's Order No. W. S.A. 318 dated the 12th March 1946 but since the District Magistrate's Order fixes the maximum prices also of steam coal and soft coke the revised draft order supersedes that order only in so far as it relates to hard coke.

cc/-

for Remembrancer of Legal Affairs.

U. R. to C.S.D.No.11157, dated the 21st November 1947.

Meenakshi Raghavan.

15/5.

c/5.

Essential  
Supplies  
(Temporary  
Powers) Act,  
1946.

Civil Supplies Department,  
Bombay Castle, November 1947,

O R D E R.

No. 33-IV-E. In exercise of the powers conferred by section 3 of the ~~Essential~~ Essential Supplies (Temporary Powers) Act, 1946 (XIV of 1946), read with the Government of India, Department of Industries and Supplies, Notification No. 349, dated the 10th April 1947, and in supersession of the Order issued by the District Magistrate, Ahmednagar, No. W.A. 318, dated the 12th March 1946, that is to say, in so far as it relates to the prices for wholesale and retail sale of Hard Coke in the Belapur and Kopergaon talukas of the Ahmednagar District, the Government of Bombay is pleased to make the following Order, namely:—

1. Short title, extent and commencement.

(i) This Order may be called the Hard Coke Price Control Order, 1947.

(ii) It extends to Belapur and Kopergaon talukas of the Ahmednagar District.

2. Maximum prices.

No person shall sell or cause to be sold Hard Coke in the areas specified in column 1 of the Schedule hereto appended wholesale at a price higher than that specified against them in column 2 and retail at a price higher than that specified against them in column 3 of the said Schedule.

Explanation:— For the purposes of this Order "wholesale sale" means sale in quantities of 10 cwts. and above.

3. Prohibition of refusal to sell.

No person shall on demand and offer of price, refuse

to sell Hard Coke available with him without reasonable cause

Explanation :- The expectation or possibility of obtaining a higher price at some future date shall not be deemed to be a reasonable cause for the purposes of this clause.

4. Issue of Cash or other memorandum. :

Every person shall --

- (a) display and keep displayed in ~~xxx~~ a conspicuous position in each place of his business a copy of this order;
- (b) in respect of every sale of Hard Coke issue to a purchaser a ~~xxx~~ cash memorandum or other memorandum containing full correct particulars of the transaction.

Schedule.

| 1.            | 2.                                                                         |        |     | 3.                                                                      |         |   |
|---------------|----------------------------------------------------------------------------|--------|-----|-------------------------------------------------------------------------|---------|---|
| Area.         | <u>Wholesale price</u><br>( <u>ex-depot or godown</u> )<br><u>per ton.</u> |        |     | <u>Retail price</u><br>( <u>ex-depot or godown</u> )<br><u>per Cwt.</u> |         |   |
|               | Rs.                                                                        | As.    | Ps. | Rs.                                                                     | As.     |   |
| 1. Kopergaon. | 66 --                                                                      | 12 --  | 0   | 3 ----                                                                  | 10 ---- | 3 |
| 2. Belapur.   | 61 ---                                                                     | 12 --- | 0   | .3 ---                                                                  | 6 ----  | 0 |

By order of the Governor of Bombay,

Secretary to Government.

Madhav Raokadam.  
15/5/56.

c/5-